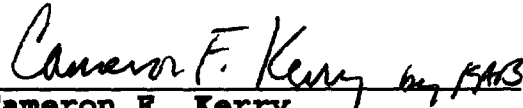



matter of state and local law, so that the Commission's exercise of the power delegated to it can be meaningful.

Respectfully submitted,


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207 CMR: COMMUNITY ANTENNA TELEVISION COMMISSION

207 CMR 6.00: RATE REGULATION

Section

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- 6.02: Applicability
- 6.03: Definitions
- 6.04: Initial Hearing
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- 6.57: On-Site Signal Test
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6.01: Effective Date

This regulation shall take effect on March 1, 1975.

6.02: Applicability

This regulation shall govern the determination of all changes in rates and charges for cable television subscriber service pursuant to M.G.L. c. 166A and regulations adopted by the Federal Communications Commission, and, with respect to changes in rates and charges, supercedes 207 CMR 5.00 (Amendment of a Final License).

This regulation shall not govern the initial determination of rates and charges in a provisional, final or renewal license issued pursuant to 207 CMR 3.00 (Granting Licenses).

6.03: Definitions

The terms defined herein shall have the following meanings:

Commission: Massachusetts Community Antenna Television Commission.

Issuing Authority: the city manager of a city having a plan D or E charter, the Mayor of any other city, or the Board of Selectmen of a town.

Licensee: a person who is issued a license pursuant to M.G.L. c. 166A, s. 3.

Party: an issuing authority or licensee.

Rates and charges: any and all amounts payable by a subscriber for regular service.

6.04: Initial Hearing

(1) Rate Change. Any party requesting a change in rates and charges shall, by certified mail--return receipt requested, file a petition for the same with the appropriate issuing authority and forward a copy to the Commission within ten (10) days. If the issuing authority requests a change in rates and charges, it shall, in addition to notifying the Commission, notify the licensee, by certified mail--return receipt requested, by forwarding a copy of the petition to the licensee at the same time the petition is filed. Said petition shall include but not be limited to such data, statistics, schedules, annual filings or other

6.04: continued

information as shall be necessary to allow an issuing authority to reach a finding of a fair and reasonable rate, such rate to be adequate, just, reasonable and nondiscriminatory.

Within forty-five (45) days following the filing of a petition for a change in rates and charges, the issuing authority shall hold a public hearing. Any party to this hearing may make provision for a stenographic record.

(2) Notice and Publication Requirements for Hearings. The issuing authority shall cause notice of any hearing on a petition for a change in rates and charges to be published in a newspaper of general circulation in the city or town to be affected, once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing(s). If there is no newspaper of general circulation in the city or town, then publication shall be by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen (14) days before the day of the hearing(s). The issuing authority shall notify the licensee by certified mail--return receipt requested of the hearing at least fourteen (14) days prior to the hearing(s).

Within an area served by an operating cable television system which has cablecasting facilities, the licensee shall cablecast each prescribed notice, or a concise summary or description thereof, over its facilities at least once daily on each of four (4) days, two (2) of the cablecasts to be between seven (7) and fourteen (14) days preceding the day of the hearing(s). The notice shall be cablecast at times most likely to reach the maximum viewing audience. The log of the cablecasts shall be incorporated in the report prescribed by 207 CMR 6.05.

The notice(s) required above shall be sufficient to identify the time, place and purpose of the hearing and shall contain a schedule setting forth the proposed changes in rates and charges.

A licensee shall notify subscribers of any proposed increase(s) by an enclosure in its billing to subscribers or by separate mailing at least fourteen (14) days before the day of the hearing(s) prescribed by 207 CMR 6.04(1). This notice shall contain a schedule of the proposed increase(s) and shall state that a public hearing will be held by the issuing authority.

These notice requirements may be supplemented by any other means, including causing the notice or a concise summary thereof, to be broadcast by radio or television facilities, at such times and with such frequency as the issuing authority considers appropriate.

6.05: Initial Hearing Findings

Within forty-five (45) days following the commencement of any hearing(s) conducted pursuant to 207 CMR 6.04(1), an issuing authority shall, after review of testimony and exhibits, file a report by certified mail--return receipt requested, simultaneously with the Commission and with all parties which shall set forth in detail its findings and the specific reasons therefor. All documents, exhibits and the stenographic record of the hearing, if any, shall be transmitted to the Commission with the report.

6.06: Commission Review

(1) Time Limit. Within sixty (60) days of the receipt of a report and findings, but not sooner than thirty (30) days, the Commission shall issue a Certificate of Verification which shall make final an issuing authority's report and findings unless:

(a) Within thirty (30) days after the receipt of an issuing authority's report and findings, a licensee adversely affected by the same files a petition for a change in rates and charges with the Commission, or

(b) The Commission determines that the findings of an issuing authority are not in accord with the standard of a fair and reasonable rate, or

(c) The Commission exercises its authority to act under 207 CMR 6.06(2).

If the Commission does not issue a Certificate of Verification, it shall, after reasonable notice to all parties, schedule a hearing de novo and render a decision as soon as is practicable.

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6.06: continued

(2) Commission Action. The Commission may upon its own motion or upon the written petition of a party, after reasonable notice to all parties affected, order a hearing, without petition to or prior hearing by the issuing authority, to fix and establish a fair and reasonable rate, said rate to be adequate, just, reasonable and nondiscriminatory if:

(a) Any party fails to comply with the procedures set forth in this regulation, or

(b) The Commission determines that the public interest requires that the rate in one or more cable television license areas be established in a consolidated proceeding.

(3) Effective Date of Changes in Rates and Charges. No change in rates and charges shall become effective except upon the issuance of a Certificate of Verification or order by the Commission under 207 CMR 6.06(1) or 6.06(2).

6.07: Notice to the Consumers' Council

Pursuant to M.G.L. c. 166A, s. 2a, the Commission shall notify the Consumers' Council of any report and findings received pursuant to 207 CMR 6.05 or any scheduled hearing of this Commission pursuant to 207 CMR 6.06.

(6.08 through 6.50: Reserved)

SUSPENSION OF CABLE TELEVISION RATE REGULATION

6.51: Applicability

Pursuant to M.G.L. c. 166A, s. 15, as amended, this regulation shall govern the suspension of regulation of rates and charges in those systems where adequate competitive alternatives to regular cable television service exist.

6.52: Definitions

The following terms as used in this regulation shall have the following meaning:

(1) Commissioner: The Community Antenna Television Commissioner appointed pursuant to M.G.L. c. 166A, s. 2.

(2) Consolidated cable system: a cable television system which operates on a technically integrated basis, as a unified business entity serving geographically proximate service areas.

(3) Grade B contours: The predicted field strength contour of a broadcast television station as defined by the Federal Communications Commission in 47 CFR 73.683(a), as amended effective July 2, 1979.

(4) Issuing authority: The municipal licensing authority as defined in M.G.L. c. 166A, s. 1(d).

(5) Licensee: Any person or business entity that has been granted a cable television license.

(6) Regular cable television service: those signals received at the system headend site without aid of an intervening relay device.

(7) Saturation: the percentage of occupied housing units passed by cable that are subscribing to regular cable television service.

6.53: Competitive Alternatives Standard

Adequate competitive alternatives to regular cable television service exist in any cable system which is located wholly within the predicted Grade B

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6.53: continued

contour of three unduplicated network signals and which has a subscriber saturation level of 70% or less.

6.54: Application of Standard

(1) The regulation of subscriber rates for regular cable television service shall be suspended in those systems where a finding has been made that a system conforms to the standards set forth in 207 CMR 6.53 above. Systems presently meeting such standard are listed in Appendix I, attached.

(2) The Commissioner shall, at least annually, review the standard as it applies in any existing or newly licensed system.

(6.55: Reserved)

6.56: Waiver

(1) Any licensee of a consolidated cable system which fails to meet the standards set forth in 207 CMR 6.53 above may by a petition filed with the Commissioner initiate a proceeding to show that adequate competitive alternatives to regular subscriber service exist. The petition shall contain the information required in 207 CMR 6.57.

(2) Any issuing authority within a consolidated cable system which otherwise meets the standards set forth in section 6.53 above may by a petition filed with the Commissioner initiate a proceeding to show that adequate competitive alternatives to regular subscriber service do not exist. The petition shall contain the information required in 207 CMR 6.57.

(3) Thirty days prior to filing such petition with the Commissioner the licensee proposing to conduct an on-site signal test shall notify in writing the issuing authorities in the consolidated system of that intention. An issuing authority shall likewise notify the licensee and any other issuing authority within a consolidated system if it proposes to conduct such a test.

6.57: On-Site Signal Test

(1) The on-site test for verifying the existence or non-existence of adequate competitive alternatives shall consist of field strength measurements of three unduplicated network signals within a consolidated system. Such test shall be performed by an independent third party, qualified to perform such tests. Regulation of subscriber rates may be suspended in any system where, after the filing of a petition and a hearing thereon, it has been determined that the Grade B signal level equals or exceeds the following:

channels 2-6	47 dBu
channels 7-13	56 dBu
channels 14-83	64 dBu

(2) Preparation for signal level measurements shall be made as follows:

(a) The number of households passed by cable in a consolidated cable system shall be determined by reference to the cable company's current list of homes passed or other appropriate demographic data.

(b) The number or locations at which measurements are to be made shall be equal to $(0.1 H)0.5$, where H is the number of households passed by the cable distribution system, but in any event, the number shall be not less than 30 nor more than 45.

(c) The specific locations representing the number of measurements to be made shall be determined by a statistically acceptable method of random selection of addresses from the previously prepared list of homes passed.

(d) Each measurement location selected shall be indicated on a scaled topographical map of the service area of the system.

(3) The following measurement procedures shall be utilized:

6.57: continued

- (a) The field strength of the visual carrier of each network television station shall be measured with a radio frequency voltmeter, or other suitable measuring device, capable of accurately indicating the peak amplitude of the synchronizing signal. Where a measuring device utilizing other than peak detection is employed for purposes of measurement, a suitable mathematical correction shall be made to reference all signal levels to the peak of the received carrier. All measurements shall be made utilizing a receiving antenna designed for the reception of the horizontally polarized signal component, elevated 30 feet above ground level.
 - (b) Each measuring location shall be chosen as close as is possible to the points indicated on the map prepared in accordance with 207 CMR 6.57(2)(d).
 - (c) At each measuring location, after equipment calibration and antenna elevation, the antenna shall be rotated to determine the direction from which the strongest signal arrives. Should such signal arrive from a direction other than from the broadcast station, such fact shall be recorded. Each measurement point shall be marked exactly on the map of the service area, and shall be suitably keyed. A written record for each location shall be maintained describing all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, overhead wires, weather conditions and other local features. The date and time of each measurement shall also be recorded.
 - (d) The signal levels measured in accordance with 207 CMR 6.57(1) shall be adjusted to remove the effects of the receiving test equipment system and to normalize the signal measurement to its ambient field strength.
- (4) A report of the measurements to the Commission shall be submitted in affidavit form and shall contain the following information:
- (a) a description of the method used to determine the random selection of measurement locations in accordance with 207 CMR 3.57(2).
 - (b) a map of the service area of the system showing each measuring location.
 - (c) a table keyed to the above map, showing the signal level at each measuring point, and weather, date and time of each measurement.
 - (d) an exhibit showing the adjustments made in accordance with 207 CMR 6.57(3)(d).
 - (e) the notes describing each measuring location prepared in accordance with 207 CMR 6.57(3)(c).
 - (f) a list of calibrated equipment used for the measurements, which specifies for each instrument its manufacturer, type, serial number, rated accuracy and the date and method of most recent calibration. Complete details of any instrument not of standard manufacture shall be submitted.
 - (g) a detailed description of the procedure employed in the field calibration of the measuring equipment, including field strength meters, measuring antenna, connecting coaxial cable and preamplifier, if used.
 - (h) a statement as to the qualifications of the person performing the measurements.

6.58: Exclusions

In a system where regulation of rates and charges is not suspended, any increase in such rates and charges shall be fixed and established pursuant to 207 CMR 6.00 (Rate Regulation). This regulation shall not govern the initial determination of rates and charges in a provisional or final license granted pursuant to 207 CMR 3.00 (License Grant) or in a renewal license.

6.00: continued

APPENDIX I

The regulation of cable television rates and charges is suspended in the following cable systems:

1. Colonial Cablevision of Revere, Inc.,
operating in Revere
2. Community Cablevision of Framingham Associates,
operating in Framingham
3. Continental Cablevision of New Hampshire, Inc.,
operating in Lawrence, Methuen and North Andover
4. Deerfield Cablesystems, Inc.,
operating in Deerfield and Sunderland
5. Greater Boston Cable Corp.,
operating in Billerica, Burlington, Stoneham, Wilmington
and Woburn
6. Greater Chicopee Cablevision, Inc.,
operating in Chicopee
7. Greater Fall River Cable TV, Inc.,
operating in Fall River
8. Greater New England Cablevision Co., Inc.,
operating in Ludlow and Wilbraham
9. Greater W-D Cablevision Co., Inc.,
operating in Dudley and Webster
10. Lowell Cable-Television, Inc.,
operating in Lowell
11. Mass. Cablevision, Inc.,
operating in Falmouth
12. Montachusett Cable Television, Inc.,
operating in Fitchburg and Leominster
13. Montachusett Cable Television, Inc.,
operating in Gardner
14. New England Cablevision of Massachusetts, Inc.,
operating in Amesbury
15. Pioneer Valley Cablevision, Inc.,
operating in Amherst and Pelham
16. Spectrum Cable Systems, Inc.,
operating in Agawam, Westfield and West Springfield
17. Stan-Fran Corp.,
operating in Groveland and Haverhill
18. Teleprompter of Worcester, Inc.,
operating in Auburn, Leicester, Spencer and Worcester
19. Video Enterprises, Inc.,
operating in Holyoke and South Hadley
20. Warner-Amex Cable Communications Inc.,
operating in Chelsea, Everett, Malden, Medford, Melrose,
Somerville and Winthrop
21. Warner-Amex Cable Communications Inc.,
operating in Salem
22. Whaling City Cable TV, Inc.,
operating in Dartmouth and New Bedford
23. Adams-Russell
operating in Peabody
24. Arlington Cablesystems Corp.,
operating in Arlington
25. Bay State TV Associates,
operating in Marion, Mattapoisett, Wareham
26. Campbell Communications, Inc.,
operating in Plymouth
27. Commonwealth Cablevision of Massachusetts, Inc.,
operating in Granby
28. Continental Cablevision of Northampton, Inc.,
operating in Northampton
29. Continental Cablevision of Saugus, Inc.,
operating in Saugus

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6.00: continued

APPENDIX I: continued

30. Continental Cablevision of Winchester, Inc.,
operating in Winchester
31. Greater Easthampton Cablevision, Inc.
operating in Easthampton
32. Greater New England Cable TV,
operating in East Longmeadow
33. Lowell Cable Television,
operating in Tewksbury, Chelmsford
34. Montachusett Cable TV,
operating in Templeton
35. Montachusett Cable TV,
operating in Lunenburg
36. Newburyport Cablesystems,
operating in Newbury
37. Newburyport Cablesystems,
operating in Newburyport
38. Times Mirror,
operating in Longmeadow
39. Warner-Amex,
operating in Lynn
40. Warner-Amex,
operating in Swampscott
41. Adams-Russell Cablevision Middlesex, Inc.,
operating in Hudson, Maynard
42. Adams-Russell Cablevision Lexington, Inc.
operating in Lexington
43. Adams-Russell Cablevision Peabody, Inc.
operating in Peabody
44. Bay Shore Cable TV
operating in Weymouth
45. Cablevision of Canton, Inc.
operating in Canton
46. Campbell Communications, Inc.
operating in Kingston
47. Commonwealth Cablevision of Mass., Inc.
operating in Southwick
48. Continental Cablevision of Mass., Inc.
operating in Beverly
49. Continental Cablevision of Mass., Inc.
operating in Newton
50. Continental Cablevision of Mass., Inc.
operating in Reading
51. Continental Cablevision of Mass., Inc.
operating in Watertown
52. Fairhaven/Acushnet Cablevision
operating in Acushnet
53. Fairhaven/Acushnet Cablevision
operating in Fairhaven
54. Greater Media, Inc.
operating in Millbury
55. Greater Media, Inc.
operating in Oxford
56. Inland Bay Cable TV Associates
operating in Attleboro
57. Ipswich Cablevision
operating in Ipswich
58. Milton Cablesystems
operating in Milton
59. Newburyport Cablesystems
operating in West Newbury
60. New England Cablevision, Inc.
operating in Essex, Gloucester, Manchester, Rockport

6.00: continued

APPENDIX I: continued

61. New England Cablevision, Inc.
operating in Salisbury
62. Prime Cable Corp.
operating in Marlboro
63. Quincy Cablesystems
operating in Quincy
64. Rollins Cablevision
operating in Dracut
65. Rollins Cablevision
operating in Franklin
66. Rollins Cablevision
operating in Plainville
67. Rollins Cablevision
operating in Somerset
68. Rollins Cablevision
operating in Swansea
69. Times Mirror Cable Television of Haverhill
operating in Georgetown
70. UA-Columbia Cablevision of Mass.
operating in North Attleboro

The regulation of cable television rates and charges is also suspended in the following cable systems, upon the expiration of any rate freeze provisions which may be contained in a license:

71. Adams-Russell Co., Inc.
operating in Acton
72. Adams-Russell Co., Inc.
operating in Norwood
73. Adams-Russell Co., Inc.
operating in Westwood
74. Campbell Communications, Inc.
operating in Carver
75. Continental Cablevision of Mass., Inc.
operating in Holbrook
76. Continental Cablevision of Mass., Inc.
operating in Needham
77. Continental Cablevision of Mass., Inc.
operating in Stoughton
78. Continental Cablevision of Mass., Inc.
operating in Whitman
79. Greater Media, Inc.
operating in Grafton
80. Greater Northbridge Cablevision, Inc.
operating in Northbridge
81. Greater South Shore Cablevision
operating in Marshfield
82. Massachusetts Cablevision Systems, Inc.
operating in Mansfield
83. Massachusetts Cablevision Systems, Inc.
operating in Medway
84. Massachusetts Cablevision Systems, Inc.
operating in Sharon
85. Natick Cablevision Corp.
operating in Natick
86. New England Cablevision, Inc.
operating in Merrimac
87. Randolph Cablesystems
operating in Randolph
88. Rollins Cablevision of Massachusetts, Inc.
operating in Andover

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6.00: continued

APPENDIX I: continued

89. Rollins Cablevision of Massachusetts, Inc.
operating in North Reading
90. Rollins Cablevision of Southeast Massachusetts, Inc.
operating in Millis
91. Rollins Cablevision of Southeast Massachusetts, Inc.
operating in Norton
92. UA-Columbia Cablevision
operating in Taunton
93. Wachusett Cablevision
operating in Winchendon
94. Warner-Amex Cable Communications, Inc.
operating in Wakefield
95. Adams-Russell Company, Inc.
operating in Braintree
96. Campbell Communications, Inc.
operating in Rockland
97. Colonial Cablevision of Milford, Inc.
operating in Milford
98. Community Cable of Dedham Associates
operating in Dedham
99. Cohtinental Cablevision of Avon, Inc.
operating in Avon
100. Continental Cablevision of Brockton, Inc.
operating in Brockton
101. Continental Cablevision of Hanson, Inc.
operating in Hanson
102. Continental Cablevision of Springfield, Inc.
operating in Springfield
103. Massachusetts Cablevision Systems, Inc.
operating in Bellingham
104. Massachusetts Cablevision Systems, Inc.
operating in Blackstone
105. Rollins Communications, Inc.
operating in Blackstone
106. Adams Russell Company, Inc.
operating in Bedford
107. Adams Russell Company, Inc.
operating in Sudbury
108. American Cablesystems of Massachusetts, Inc.
operating in Cohasset
109. American Cablesystems of Massachusetts, Inc.
operating in Hanover
110. American Cablesystems of Massachusetts, Inc.
operating in Hingham
111. American Cablesystems of Massachusetts, Inc.
operating in Hull
112. American Cablesystems of Massachusetts, Inc.
operating in Norwell
113. American Cablesystems of Massachusetts, Inc.
operating in Provincetown
114. American Cablesystems of Massachusetts, Inc.
operating in Rowley
115. American Cablesystems of Massachusetts, Inc.
operating in Scituate
116. Cablevision of Boston,
operating in Boston
117. Cablevision of Brookline
operating in Brookline
118. Continental Cablevision of Southern Mass., Inc.
operating in East Bridgewater
119. Continental Cablevision of Southern Mass., Inc.
operating in Easton

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APPENDIX I: continued

- 120. Continental Cablevision of Massachusetts, Inc.
operating in Hamilton
- 121. Continental Cablevision of Massachusetts, Inc.
operating in Wellesley
- 122. Continental Cablevision of Massachusetts, Inc.
operating in Raynham
- 123. Continental Cablevision of Massachusetts, Inc.
operating in Wenham
- 124. Continental Cablevision of Southern Mass., Inc.
operating in West Bridgewater
- 125. Massachusetts Cablevision Systems, Inc.,
operating in Ashland
- 126. Massachusetts Cablevision Systems, Inc.,
operating in Foxborough
- 127. Massachusetts Cablevision Systems, Inc.,
operating in Holliston
- 128. Massachusetts Cablevision Systems, Inc.,
operating in Hopedale
- 129. Massachusetts Cablevision Systems, Inc.,
operating in Mendon
- 130. Massachusetts Cablevision Systems, Inc.,
operating in Walpole
- 131. Wachusett Cablevision,
operating in Clinton
- 132. Wachusett Cablevision,
operating in Lancaster

REGULATORY AUTHORITY

207 CMR 6.00: M.G.L. c. 166A, ss. 15 and 16.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the)	MM Docket No. 92-266
Cable Television Consumer)	
Protection and Competition)	
Act of 1992:)	
)	
Rate Regulation)	
)	

Comments of

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January 27, 1993

SUMMARY

The New England Cable Television Association, Inc. ("NECTA") is the trade association representing substantially all cable operators in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. NECTA submits these comments on jurisdictional and procedural issues to stress that Title VI of the Communications Act -- the Cable Act -- as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("the 1992 Act") does not "upset the traditional relationship between state and local governments, under which a local government is a political subdivision of the state and derives its authority from the state." Cable Franchise Policy and Communications Act of 1984, Report of the Committee on Energy & Commerce, H. Rep. No. 98-934, 98th Cong. 2d Sess., at 94 (Aug. 1, 1984); see 47 U.S.C. § 556(b).

Thus, the requirement in Section 623 (a) (3) of the 1992 Act that franchising authorities have "the legal authority to adopt ..." rate regulations and the express limit of the Commission's rate regulatory jurisdiction to circumstances where a franchising authority asserts, but is unable to perfect, jurisdiction make it clear that initiation of rate regulation pursuant to the Act is a function of state and local law and of the policy choices of states and their political subdivisions. In this light, the Act cannot be said to preempt state laws and thereby either empower the Commission to regulate rates where state and local law does not authorize it or grant power to do so directly to franchising authorities. Such a grant of power would be an extraordinary intrusion on state sovereignty that is neither within the Commerce power nor stated expressly in the Act with the clarity

necessary. See Gregory v. Ashcroft, __ U.S. __, 115 L.Ed.2d 410, 423-24 (1991).

To allow latitude for the authority of the States preserved in the Cable Act, the Commission's regulations should permit states to supervise the administration of rate regulation by their political subdivisions, regardless of whether the states or their supervising agencies fit within the definition of "franchising authorities" under the Act. In Massachusetts, for example, the state has delegated supervisory authority to a state cable commission but confers franchising only on its municipalities; other states may choose to overlay similar supervision on their systems of cable franchising, and should be free to do so. The definition of a "franchising authority" that may seek regulatory certification pursuant to the 1992 Act should be tailored accordingly.

The Commission's regulations also must afford the opportunity to cable operators and other interested parties to present issues concerning whether a franchising authority meets the criteria for exercising regulatory jurisdiction under Section 623 (a) (3), particularly whether it has "legal authority to adopt .. such regulations." Otherwise, the Commission would render the certification criteria meaningless. It is feasible to allow such an opportunity on a pleading schedule comparable to that contemplated by the Commission in other situations, and thereby review certification showings more effectively than can the Commission on its own motion.

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